

AMENDED IN SENATE AUGUST 24, 1998
AMENDED IN SENATE AUGUST 12, 1998
AMENDED IN SENATE JULY 28, 1998
AMENDED IN SENATE JULY 14, 1998
AMENDED IN SENATE JULY 8, 1998
AMENDED IN ASSEMBLY APRIL 16, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2316

Introduced by Assembly Member Knox

February 19, 1998

An act to amend Section 11166.1 of the Penal Code and to amend Section 317 of the Welfare and Institutions Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2316, as amended, Knox. Child abuse: reports.

(1) Under existing law, when a child protective agency receives certain information regarding child abuse alleged to have occurred in a facility licensed to care for children, the agency is required to notify the licensing office with jurisdiction over the facility.

This bill would require any employee of a child protective agency who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she

knows or reasonably suspects has been the victim of child abuse, within 36 hours, to send or have sent to the attorney who represents the child in dependency court, a copy of the suspected child abuse and neglect report prepared for the court pursuant to specified provisions of law. The bill would require the child protective agency to maintain a copy of that report.

(2) Under existing law, the attorney appointed to represent a dependent child is required to be given access to all records relevant to the case that are maintained by state or local public agencies.

This bill would require all information requested from a child protective agency regarding a child who is in protective custody or from a child's guardian ad litem, to be provided to the child's counsel within 30 days of the request. Because the bill would impose additional duties on child protective agencies, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11166.1 of the Penal Code is
2 amended to read:
3 11166.1. (a) When a child protective agency receives
4 either of the following, it shall, within 24 hours, notify the
5 licensing office with jurisdiction over the facility:



(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The child protective agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of a child protective agency who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the suspected child abuse and neglect report prepared for the court in accordance with Section 11166 of the Penal Code. The child protective agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the child protective agency within 30 days of the request.

SEC. 2. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) When it appears to the court that a parent or guardian of the minor desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(b) When it appears to the court that a parent or guardian of the minor is presently financially unable to afford and cannot for that reason employ counsel, and the minor has been placed in out-of-home care, or the petitioning agency is recommending that the minor be placed in out-of-home care, the court shall appoint counsel, unless the court finds that the parent or guardian

1 has made a knowing and intelligent waiver of counsel as
2 provided in this section.

3 (c) In any case in which it appears to the court that the
4 minor would benefit from the appointment of counsel the
5 court shall appoint counsel for the minor as provided in
6 this section. A primary responsibility of any counsel
7 appointed to represent a minor pursuant to this section
8 shall be to advocate for the protection, safety, and
9 physical and emotional well-being of the minor. Counsel
10 for the minor may be a county counsel, district attorney,
11 public defender, or other member of the bar, provided
12 that the counsel does not represent another party or
13 county agency whose interests conflict with the minor's.
14 The fact that the district attorney represents the minor in
15 a proceeding pursuant to Section 300 as well as conducts
16 a criminal investigation or files a criminal complaint or
17 information arising from the same or reasonably related
18 set of facts as the proceeding pursuant to Section 300 is not
19 in and of itself a conflict of interest. The court shall
20 determine if representation of both the petitioning
21 agency and the minor constitutes a conflict of interest. If
22 the court finds there is a conflict of interest, separate
23 counsel shall be appointed for the minor. The court may
24 fix the compensation to be paid by the county for the
25 services of appointed counsel, if counsel is not a county
26 counsel, district attorney, public defender or other public
27 attorney.

28 (d) The counsel appointed by the court shall represent
29 the parent, guardian, or minor at the detention hearing
30 and at all subsequent proceedings before the juvenile
31 court. Counsel shall continue to represent the parent or
32 minor unless relieved by the court upon the substitution
33 of other counsel or for cause. The representation shall
34 include representing the parent or the minor in
35 termination proceedings and in those proceedings
36 relating to the institution or setting aside of a legal
37 guardianship.

38 (e) The counsel for the minor shall be charged in
39 general with the representation of the minor's interests.
40 To that end, the counsel shall make or cause to have made

1 any further investigations that he or she deems in good
2 faith to be reasonably necessary to ascertain the facts,
3 including the interviewing of witnesses, and he or she
4 shall examine and cross-examine witnesses in both the
5 adjudicatory and dispositional hearings. He or she may
6 also introduce and examine his or her own witnesses,
7 make recommendations to the court concerning the
8 minor's welfare, and participate further in the
9 proceedings to the degree necessary to adequately
10 represent the minor. In any case in which the minor is
11 four years of age or older, counsel shall interview the
12 minor to determine the minor's wishes and to assess the
13 minor's well-being, and shall advise the court of the
14 minor's wishes. Counsel for the minor shall not advocate
15 for the return of the minor if, to the best of his or her
16 knowledge, that return conflicts with the protection and
17 safety of the minor. In addition counsel shall investigate
18 the interests of the minor beyond the scope of the
19 juvenile proceeding and report to the court other
20 interests of the minor that may need to be protected by
21 the institution of other administrative or judicial
22 proceedings. *The attorney representing a child in a*
23 *dependency proceeding is not required to assume the*
24 *responsibilities of a social worker and is not expected to*
25 *provide nonlegal services to the child.* The court shall
26 take whatever appropriate action is necessary to fully
27 protect the interests of the minor.

28 (f) Notwithstanding any other law, counsel shall be
29 given access to all records relevant to the case which are
30 maintained by state or local public agencies. All
31 information requested from a child protective agency
32 regarding a child who is in protective custody, or from a
33 child's guardian ad litem, shall be provided to the child's
34 counsel within 30 days of the request. Counsel shall be
35 given access to records maintained by hospitals or by
36 other medical or nonmedical practitioners or by child
37 care custodians, in the manner prescribed by Section 1158
38 of the Evidence Code.

39 (g) In a county of the third class, if counsel is to be
40 provided to a minor at county expense other than by

1 counsel for the agency, the court shall first utilize the
2 services of the public defender prior to appointing
3 private counsel, to provide legal counsel. Nothing in this
4 subdivision shall be construed to require the
5 appointment of the public defender in any case in which
6 the public defender has a conflict of interest. In the
7 interest of justice, a court may depart from that portion
8 of the procedure requiring appointment of the public
9 defender after making a finding of good cause and stating
10 the reasons therefor on the record.

11 (h) In a county of the third class, if counsel is to be
12 appointed for a parent or guardian at county expense, the
13 court shall first utilize the services of the alternate public
14 defender, prior to appointing private counsel, to provide
15 legal counsel. Nothing in this subdivision shall be
16 construed to require the appointment of the alternate
17 public defender in any case in which the public defender
18 has a conflict of interest. In the interest of justice, a court
19 may depart from that portion of the procedure requiring
20 appointment of the alternate public defender after
21 making a finding of good cause and stating the reasons
22 therefor on the record.

23 SEC. 3. Notwithstanding Section 17610 of the
24 Government Code, if the Commission on State Mandates
25 determines that this act contains costs mandated by the
26 state, reimbursement to local agencies and school
27 districts for those costs shall be made pursuant to Part 7
28 (commencing with Section 17500) of Division 4 of Title
29 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million
31 dollars (\$1,000,000), reimbursement shall be made from
32 the State Mandates Claims Fund.

33 Notwithstanding Section 17580 of the Government
34 Code, unless otherwise specified, the provisions of this act
35 shall become operative on the same date that the act
36 takes effect pursuant to the California Constitution.

